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Message Text

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62
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INFO OCT-01 EUR-25 L-03 JUSE-00 ISO-00 COME-00 DRC-01 /041 R

DRAFTED BY EB/C /BP:RJBUSHNELL:VJW
APPROVED BY EB/CBA/BP:RJBUSHNELL
EUR/CE - BFLATIN (PHONE)
L/EB - MSPIEGEL (PHONE)
JUSTICE - JDAVIDOW (PHONE)
---------- 042024
P R 262216Z JUN 74
FM SECSTATE WASHDC
TO USMISSION BERLIN PRIORITY
INFO AMEMBASSY BONN

UNCLAS STATE 137703

E.O. 11652: N/A
TAGS: ETRD, US
SUBJECT: POSSIBLE ANTITRUST SUIT INVOLVING METALLGE-
SELLSCHAFT, A.G.

1. DEPARTMENT OF JUSTICE HAS INFORMED US THAT JUSTICE IS LIKELY TO FILE A CIVIL SUIT IN THE NEAR FUTURE AGAINST A U.S. FIRM, FOOTE MINERAL COMPANY (FOOTE) AND METALL-GESELLSCHAFT, A.G. (METALL), A GERMAN COMPANY WHICH THROUGH A SUBSIDIARY DOES BUSINESS IN THE U.S. IF FILED, THE SUIT WILL CHARGE VIOLATION OF U.S. ANTITRUST LAWS AS A RESULT OF MARKET-ALLOCATION AGREEMENTS BETWEENTHE TWO COMPANIES.

2. JUSTICE HAS EVIDENCE INDICATING THAT FROM 1964 TO DATE, METALL AND FOOTE HAVE DIVIDED THE WORLD MARKET FOR LITHIUM AND LITHIUM PRODUCTS INTO EXCLUSIVE TRADING AREAS, AND THAT THEY HAVE ALLOCATED THOSE MARKETS BETWEEN THEM-SELVES. METALL AND FOOTE EFFECTUATED THIS ALLOCATION OF WORLD MARKETS PRINCIPALLY BY ENTERING INTO RECIPROCAL SALES AGENCY CONTRACTS, WHICH IMPOSE A FIVE PERCENT PENALTY FOR SALES BY ONE PARTY INTO THE EXCLUSIVE TERRITORY OF THE OTHER, AND BY METALL'S AGREEMENT TO TRANSPORT AND SELL ALL LITHIUM PURCHASED FROM FOOTE OUTSIDE OF FOOTE'S
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TERRITORY.

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3. JUSTICE BELIEVES THE PARTIES HAVE THEREBY RESTRAINED THE FOREIGN COMMERCE OF THE UNITED STATES. THEREFORE, JUSTICE PROPOSES TO REQUEST THAT, IN ADDITION TO OTHER APPROPRIATE RELIEF, THE COURT ORDER THAT THE SALES AGENCY CONTRACTS BE TERMINATED AND THAT RESTRICTIVE PROVISIONS IN THE OTHER CONTRACTS BETWEEN FOOTE AND METALL BE STRICKEN.

4. MISSION IS REQUESTED TO INFORM THE FRG OF THE POSSIBLE SUIT, WITH SPECIFIC REFERENCE TO THE 1967 OE NOTIFICATION PROCEDURE. THE OECD LISTS THE FOLLOWING OFFICE AS THE APPROPRIATE RECIPIENT OF SUCH NOTIFICATION: PROF. DR. E. GUNTHER, PRASIDENT DES BUNDESKARTELLAMTES, MEHRINGDAMM 129, 1 BERLIN 61. SISCO

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